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337, 24 Am. St. Rep. 506; *Berg* v. *Neal,* 40 Ind. App. 575, 82 N. E. 802; *Phillips* v. *Dressler,* 122 Ind. 414, 24 N. E. 226; *Newsom* v. *Newsom* (Tenn. Ch.), 56 S. W. 29; *Wille* v. *Bartz,* 88 Wis. 424, 60 N. W. 789.

The right of the servient owner to erect gates across an easement of way acquired by prescription where they are not an unreasonable obstruction to the purpose for which the way has been used, appears to be well established; and "The great preponderance of convenience to the landowner over the slight inconvenience to the way owner seems to make it 'reasonable' in the eye of the law that such should be the rule." *Berg* v. *Neal, supra.*

EMINENT DOMAIN—CONSEQUENTIAL INJURIES FROM PUBLIC USE.—In a state where the constitution provided that no private property shall be taken or damaged for public use without just compensation the plaintiff's property was diminished in value through the lawful grading of a street. *Held,* the plaintiffs are entitled to damages over and above the benefits occasioned by the public improvement. *Trust Co.* v. *City of Spokane* (Wash.), 134 Pac. 927.

The great majority of cases hold that the constitutional right to compensation when private property is taken for a public use does not extend to cases of consequential injury through the lawful grading of a street. *Callender* v. *Marsh,* 1 Pick. (Mass.) 418; *Smith* v. *City of Washington,* 20 How. (U. S.) 135; *Town of Harrisonburg* v. *Roller,* 97 Va. 582, 34 S. E. 573. It has further been held, but probably on less sound reasoning, that even actual or direct damage to private property does not constitute a "taking" under the meaning of that term. *Talcott Bros.* v. *City of Des Moines,* 134 Iowa 113, 109 N. W. 311.

The injustice of depreciating the value of private property for the public good without compensation has been recognized in the majority of the states. It has been remedied by incorporating into the constitutions the phrase "or damaged;" and this addition has by the overwhelming weight of authority been held to cover consequential injuries resulting from improvements to the streets and highways. *Swift & Co.* v. *City of Newport News,* 105 Va. 108, 52 S. E. 821; *Lumber Co.* v. *Porter,* 155 Ala. 426, 46 So. 773; *Brown* v. *City of Seattle,* 5 Wash. 35, 31 Pac. 313. But see *Lieper* v. *City of Denver,* 36 Colo. 110, 85 Pac. 849, 7 L. R. A. (N. S.) 108.

EMINENT DOMAIN—DAMAGES—VALUE FOR SPECIAL USE.—Where a railroad, in order to straighten a dangerous curve in its roadbed, took by eminent domain, a portion of appellee's property, it was *Held,* in estimating the damages, the adaptability of the land for railroad purposes because of its location can be considered, but not its value to the company because of its necessity. *Oregon R. & Nav. Co.* v. *Taffe* (Ore.), 134 Pac. 1024.

The great object of the courts in awarding damages for land taken under the power of eminent domain is to assess the damages at the *"market value"* of the property, with due regard for the effect of such taking upon the remaining property of the defendant where only part of

the tract is taken. *Boom Co.* v. *Patterson,* 98 U. S. 403, 25 L. Ed. 206; *State* v. *Hudson Co. Freeholders,* 55 N. J. L. 88, 25 Atl. 322, 17 L. R. A. 785; 15 CYC. 685, 687. But difficulty arises frequently in determining what conditions and qualities of the land shall constitute its market value. The question of whether or not the adaptability of the land to the special use for which it is taken shall constitute a part of its market value, has given the courts more or less difficulty. 2 LEWIS, EMINENT DOMAIN, 2 ed., 1052. The general rule is that damages may be given for the value of the land for the special use for which it is taken, whereever such value has become a part of the market value of the land by enhancing the desirability of the property in the public mind. Thus, such a recovery was allowed where the use was such that there was existing, or imminently probable, competition for the land for such use. *Boom Co.* v. *Patterson, supra; In re Ashokan Dam,* 190 Fed. 413; *Shenandoah Val. R. Co.* v. *Shepherd,* 26 W. Va. 672. And the following decisions seem impliedly to base the recovery of damages on the same ground of competition. *Ligare* v. *Chicago M. & N. R. Co.,* 166 Ill. 249, 46 N. E. 803; *Hartshorn* v. *Ill. Val. R. Co.,* 216 Ill. 392, 75 N. E. 122; *Brown* v. *Forest Water Co.,* 213 Pa. St. 440, 62 Atl. 1078. Although the presence of competition is not shown, the principle seems to be recognized in, *Alloway* v. *Nashville,* 88 Tenn. (4 Pickle) 510, 13 S. W. 123, 8 L. R. A. 123, 1 Am. R. R. & Corp. Rep. 671. But where competition is prevented by the exercise of the use for which the land is taken being confined to a single agency (because of the nature of the use or the location of the land, etc.) the market value is not raised by the enhancement of the property's value in the public mind, and hence the adaptability of the land to the use cannot be considered in estimating damages. *United States* v. *Seufert Bros. Co.,* 78 Fed. 520; *Sargent* v. *Town of Merrimac,* 196 Mass. 171, 81 N. E. 970; *In re Simmons,* 195 N. Y. 573, 88 N. E. 1132, 130 App. Div. 350, 356, 114 N. Y. Supp. 571, 575. And where land on both sides of a stream was condemned for a mill dam site, such location was held not to constitute the land peculiarly valuable as such a site, since other land on the stream was equally adaptable for such purposes. *Indiana Power Co.* v. *St. Joseph & E. Power Co.,* 159 Ind. 42, 63 N. E. 304; *Id.,* 159 Ind. 42, 64 N. E. 468. Moreover, the value of the land to the condemner because of its *necessity* to him cannot be considered in awarding damages, because such necessity is inestimable in value, and moreover, does not influence the public mind so as to increase the market value. *United States* v. *Seufert Bros. Co., supra; Ligare* v. *Chicago M. & N. R. Co., supra; St. Louis K. & N. W. R. Co.* v. *Knapp, Stout & Co.,* 160 Mo. 396, 61 S. W. 300; *In re Simmons, supra; Alloway* v. *Nashville, supra.* The decision in each case must rest largely upon its own peculiar facts, and hence no definite rule can be formulated to cover all cases.

EQUITY—WATER AND WATERCOURSES—INJUNCTION—PRESCRIPTION.—The defendant diverted certain waters which otherwise would have flowed into a lake. The plaintiff who owned land bordering on this lake brought suit to enjoin the defendant from diverting the water. The exact dam-